

# SENATE BILL REPORT

## SB 6696

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As Reported By Senate Committee On:  
Government Operations & Elections, February 07, 2008

**Title:** An act relating to actions for wrongful injury or death.

**Brief Description:** Changing the requirements for, and recoveries under, a wrongful death cause of action, or a survival action.

**Sponsors:** Senators Fairley, Prentice, Kohl-Welles, Tom, Weinstein, Kline, McDermott and Murray.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/05/08, 2/07/08 [DPS].

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 6696 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, McDermott and Pridemore.

**Staff:** Khalia Gibson (786-7460)

**Background:** Wrongful death is a civil claim against a party who may be held liable for the death of a person. Washington State provides for such actions through four interrelated statutes: the general wrongful death statute; the child death statute; the general survival statute; and the special survival statute. Wrongful death statutes provide a new cause of action on behalf of specified beneficiaries for damages suffered as a result of the decedent's death. Survival actions do not create a new cause of action, they simply allow for the continuation of any cause of action which the decedent could have maintained had the decedent lived.

General Wrongful Death Statute. When the death of a person is caused by the wrongful act, neglect, or default of another, the deceased's personal representative may maintain an action for damages against the person causing the death, even if the death was caused under circumstances which amount to a felony. The statute does not specify the type of damages that are recoverable, only that a jury may decide what damages seem just.

The wife, husband, state registered domestic partner, child or children, including stepchildren, of the deceased may be beneficiaries of a wrongful death claim. If none of the listed next of kin exist, the beneficiaries may be the deceased's parents, or brothers or sisters who were

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dependent upon the deceased person for support. The parents, and brothers or sisters must be residents of the United States at the time of the decedent's death.

Child Death Statute. A parent may bring a cause of action for the wrongful injury or death of a minor child if the parent regularly contributed to the child's support, or an adult child if the parent was dependent on the adult child for support. The action may be brought by either, or both parents, but only one cause of action is created. If the parents are separated or not married to each other, damages may be awarded to each parent separately. Recoverable damages include medical expenses, loss of services and support, and loss of love and companionship among additional damages.

General Survival Statute. Any cause of action that the decedent could have brought prior to death may be continued by the decedent's personal representative. An action under the general survival statute is brought by the decedent's personal representative and is for the benefit of the decedent's estate. The statute does not create a separate claim for the survivors, but merely preserves the decedent's cause of action.

Special Survival Statute. A cause of action exists for personal injuries that resulted in the decedent's death. The action may be brought by the executor or administrator of the decedent's estate and is for the benefit of the statutorily defined beneficiaries. The statute does not specifically define recoverable damages.

The survival statutes only govern pre-death damages and do not create claims on behalf of the deceased for the loss of life itself. Additionally, the value of a person's shortened life expectancy is not a separately recoverable item of damages.

**Summary of Bill:** The bill as referred to committee was not considered.

**SUMMARY OF BILL (Recommended Substitute):** Changes are made to the wrongful death and survival statutes regarding beneficiaries and recoverable damages. The term "financial dependence" is defined.

General Wrongful Death Statute. If the deceased has no spouse or children, the cause of action may be maintained for the benefit of the parents of a deceased adult child if the parents are financially dependent upon the deceased for support, or if the parents have had significant involvement in the adult child's life. The action may also be maintained by the sole beneficiary of the decedent's life insurance who has had significant involvement in the decedent's life.

If none of the listed next of kin exist, the claim may be maintained for the benefit of sisters or brothers who are financially dependent upon the deceased person for support. There is no United States residency requirement. The jury may award both economic and non-economic damages.

Child Death Statute. A parent who is financially dependent on a child for support or who has had significant involvement in the deceased child's life may maintain a cause of action for the injury or death of a child.

Each parent is entitled to recover separately from the other parent for his or her own loss regardless of marital status, even though only one cause of action is created.

General Survival Statute. In addition to recovering economic losses, the personal representative is entitled to recover damages on behalf of the statutorily defined beneficiaries. Such damages include claims for pain and suffering, anxiety, emotional distress, or humiliation personal to the deceased in such amounts as determined by a jury.

Special Survival Statute. An action for personal injury causing death must not terminate by reason of death if the person has a surviving beneficiary in whose favor the action may be brought. In addition to economic losses, beneficiaries are entitled to recover non-economic damages such as damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation. The amount of damages will be determined by the jury.

New Sections. The act applies to deaths occurring before, on, or after the effective date of this act only if the cause of action occurred within the three year statute of limitations. Claims outside of the limitation period cannot be revived or created.

Beginning on December 1, 2009, the risk management division within the Office of Financial Management must annually report to the appropriate committees of the Legislature on the state incidents covered by this act. The reports must continue until December 1, 2014. Local risk management pools are required to report to the local government regarding incidents that involve the local government.

The original version of the bill allowed for recovery under the general wrongful death statute for state registered domestic partners who have had significant involvement in the decedent's life if none of the primary kin listed in the statute exist.

Recovery was also allowed under the general and special survival statutes for grief, loss of enjoyment of life, and shortened or lost life expectancy. A reporting provision for local government was also added.

**EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute as Passed Committee):** Provides that financial dependence includes dependence based on actual monetary contributions or contributions of services that have an economic or monetary value.

**Appropriation:** None.

**Fiscal Note:** Requested on January 31, 2008.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:**  
PRO: The current statute is unfair and discriminatory. There is currently an anomaly and the proposed legislation would fix it. Any action for wrongful death is joined, and the right of beneficiaries will continue to exist. There is one class of citizens that is affected by this bill, those who are responsible for the death of another human being. This could happen to anyone at any time and it would hurt just as much as someone who lost a child under the age of eighteen. No parent should have to endure the pain of losing a child, and no one can truly understand unless they have experienced the loss of a child. The legislation would provide accountability. Not having a law in place basically says that someone's son or daughter's life

had no value. The bill gives hope that the voices of deceased children will be heard through their surviving parents. There is no current recourse for parents, and we should be able to hold people accountable. If a municipality has to close down a facility to pay their debt, then they should be forced to do so.

CON: Local governments are suffering significant cuts. Under the current statute, the decedent's estate always has a cause of action regardless of financial dependency. Expanding who can file a claim and the amount and type of damages is expensive to counties and local governments. There is a current balance in place which needs to be maintained. Additional lawsuits will increase the cost per case by approximately one million dollars. This is about more than money, there are policy concerns which need to be addressed as well. The relationship of the spouse and children to the decedent is of primary importance. The ordinary person getting sued under these statutes has limited resources, and the spouse and children of the deceased should have the first right of recovery. Removing the dependency requirement for beneficiaries runs afoul of the original intent behind the statute. By expanding liability, there is a risk of disrupting the current accord. There would be a tremendous impact on medical malpractice decisions and there is no great societal change which justifies the change. No bill will solve the problem and pain of losing a loved one.

**Persons Testifying:** PRO: Larry Shannon, WSTLA; David Lord, Disability Rights of Washington; Suzanne Kirkpatrick, Sabrina Dahlquist, Jeff Dahlquist, Helen Sheets, citizens.

CON: Tammy Fellin, Association of Washington Cities; Rene Tomissen, Office of the Attorney General; Mary Spillane, Washington Healthcare Risk Management Society.